SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968

No. 419

CHARLES E. HART, Jr.,

Petitioner,

vs.

THE OHIO STATE BAR ASSOCIATION,

Respondent.

REPLY BRIEF

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REPLY BRIEF

This Reply Brief is filed in order that matters presented in the Argument of Respondent might be clarified.

First, it should be understood that the crime of which Petitioner was convicted was under Section 7203, Title 26, U.S. Code. This was for failure to file income tax returns and *not* for income tax evasion. The Argument of Respondent, is misleading in this connection as they imply that tax evasion was involved which is clearly not the case. Respondent cites 59 ALR 2d 1398-1407 as supporting its argument. However, that annotation and collected cases deals with income tax evasion which is not a question here. We quote from page 1399 the lead paragraph of said annotation which limits the scope of the topic and makes it inapplicable to the case at hand:

"This annotation discusses conviction of an attorney in a federal court for *evasion* of his own personal income taxes as grounds for disbarment or lesser disciplinary by courts of his state." [emphasis added]

Respondent, at page 6 of its Brief in Opposition cites cases dealing with the phrases "unprofessional conduct" and "gross carelessness". Thus in *Yoshizawa v. Hewitt*, 52 F 2d 411, cited by Respondent, the court found that the phrase "gross carelessness" had an established meaning under common law as interpreted in cases. So also in *Brinkley v. Hassig*, 83 F 2d 351, where the court in dealing with the phrase "unprofessional conduct" found from the testimony that the physician in diagnosis and prescribing without adequate information had not met accepted standards of practice. Respondent cites no authority which lends itself to an interpretation or a meaning of the phrase found in Canon 29 that "He should strive at all times to uphold the honor and to maintain the dignity of the profession . . ." Nor have we found authority to assist in interpretation of that language which we submit is so general as to defy interpretation without the establishment of further guidelines.

We have learned that the American Bar Association has recently revised and updated the Canons of Professional Ethics as a result of recommendations of a special committee chaired by former Justice Clark. To this writing we have not found the revised Canons. It may be that they have not yet been formally adopted and so have not been promulgated. It is suggested, however, that the vague, broad and general language found in Canons 29 and 32, here considered, will not be present in the revised Canons.

One further point merits clarification. Petitioner did not urge that his conduct should merit a reprimand as stated

by Respondent as page 5 of its Brief. Petitioner in Brief to the Panel and at Hearing simply urged that if misconduct were found that the discipline be limited to a reprimand. No misconduct was ever admitted, only the fact of the conviction was stipulated and agreed to. Further, Respondent introduced no evidence that said conviction had in fact brought the "profession into disrepute". That was a conclusion made by the Board and confirmed by the court without evidence, as for example testimony of persons who felt the Petitioner had brought the "profession into disrepute".

CONCLUSION

We reiterate, as in the original Petition, that the language of the Canons, rather than the conduct of Petitioner, must be looked to in evaluating the constitutional question in connection with their indefiniteness.

Respectfully submitted,

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